

Hawaiian Gazette Supplement, Jan. 31, 1883.

Supreme Court of the Hawaiian Islands.
January Term, 1883. In Banco.

Judd C. J., McCully and Austin J. J.
D. KAHAKALU VS. LEPOLOA.
Opinion by Justice C. J.

This is an action of ejectment for the possession of a piece of land at Waipio, Island of Hawaii, being Apuna 1, or Royal Patent No. 8816, R. to Pezzani. The plaintiff claimed by purchase from the heirs of Kawahilaisain, Pezzani's brother. The defendant claimed by deed from Isaac Paule alleged to be his son and heir of Nalae's daughter of Pezzani the Plaintiff. After the evidence was in, the Plaintiff's counsel admitted that Nalae was a daughter of Pezzani, and that defendant was entitled to one half of the land by purchase from Isaac Paule her husband, and claimed that the plaintiff's grants were entitled to the other half as her heirs at law through Kawahilaisain. The jury found a verdict for the plaintiff for one undivided half of the land.

On a careful review of the evidence we find it was simply sufficient to sustain this verdict.

The counsel for the defendant has filed a motion for a new trial on the ground of newly discovered evidence, but he did not present it in the first instance for the consideration of the Justice who presided at the trial. This was irregular, unless done by consent.

An examination of the affidavits in support of the motion discloses that this testimony is not very conclusive, but there is nothing in them showing that by the exercise of ordinary diligence the witness could not have been produced at the trial.

The exceptions are overruled and new trial denied.

C. Brown for plaintiff, W. L. Hobohohiki for defendant.

HONOLULU, January 29th 1883.

Supreme Court of the Hawaiian Islands
January Term, 1883. In Banco.

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LIMA VS. D. K. PEZZANI, App't.

Opinion of the Court by Justice C. J.

The plaintiff brought his action at this term to recover from the administrator of Kano lately deceased, the sum of three hundred and twenty-two 20-100ths dollars, \$312 20, which was claimed for board and lodging furnished the deceased for six years preceding his death and care of his land at \$1 per week, also \$7.50 for a copy of a Royal Patent and \$2 for digging deceased's grave.

The jury was waived and the presiding Justice rendered judgment for defendant which is construed by the plaintiff as being contrary to the law and the evidence.

It seems that the deceased had lived with plaintiff for thirteen years up to the time of his death, being a distant relation of his. He shared somewhat in the work of cultivation and preparing food for the household, sold flowers from the garden and lived in this manner without objection, no claim for board or lodging even having been made against him by the plaintiff; in fact, the plaintiff says he never expected pay. The plaintiff was on friendly terms with deceased all the while, he now says he was innocent and a pleasure loving man.

No express promise to pay was made by the deceased and we think that all the circumstances of this case negative the idea that a promise to pay for board and lodging can be implied.

As a assumption, especially when the habits of Hawaiians as to such hospitalities are considered, cannot be implied from the facts of this case.

The parties did not act as they would have acted if the expectation of paying for board existed.

As to the other items in the bill of particulars we understand the Court directed the administrator to pay them.

A judgment for these amounts could not carry costs.

The exceptions are overruled.

S. B. Hale for plaintiff. J. M. Davidson for defendant.

Honolulu, January 29th, 1883.

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